



July 25, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 18-214, 17-318, 17-317, 17-289, 17-105; GN Docket No. 12-268

Dear Ms. Dortch:

On July 23, the undersigned met separately with FCC Chief of Staff Matthew Berry and Media Bureau Chief Michelle Carey. During these meetings, NAB discussed the Commission's draft Notice of Proposed Rulemaking and Order concerning the reimbursement of Low Power Television, TV translator and FM radio stations for expenses associated with repacking.<sup>1</sup> NAB also discussed the Commission's draft Report and Order concerning an incubator program to support new and diverse voices in the broadcast industry.<sup>2</sup> Finally, NAB discussed the Commission's proceeding concerning the national ownership cap<sup>3</sup> with Mr. Berry and the Commission's proceeding addressing broadcast television stations' carriage elections<sup>4</sup> with Ms. Carey.

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<sup>1</sup> *LPTV, TV Translator, and FM Broadcast Station Reimbursement*, Draft Notice of Proposed Rulemaking and Order, MB Docket No. 18-214, GN Docket No. 12-268, FCC-CIRC1808-5 (circulated July 12, 2018) (Draft NPRM).

<sup>2</sup> *Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Draft Report and Order, MB Docket No. 17-189, FCC-CIRC1808-6 (circulated July 12, 2018).

<sup>3</sup> *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (2017).

<sup>4</sup> *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, MB Docket Nos. 17-317, 17-105, FCC 17-168 (Dec. 14, 2017).

As explained in greater detail elsewhere, NAB is seeking two key changes to the draft NPRM on reimbursement.<sup>5</sup> First, NAB believes that the draft NPRM misinterprets the plain language of the Reimbursement Expansion Act (REA or Act).<sup>6</sup> The draft NPRM improperly states that the Commission can only reimburse FM stations (among others) from Fiscal Year 2018 funds.<sup>7</sup> Rather, Congress imposed no such limitation, and the Commission has discretion to go beyond the Fiscal Year 2018 enumerated funds if necessary with its Fiscal Year 2019 allocation. The draft NPRM should, at a bare minimum, seek comment on the REA and the availability of funds for services beyond full power TV from the allocation from Fiscal Year 2019 funds.

In addition, NAB asked the Commission to dial back its proposal for disbursement of funds to FM stations, as its proposal raises a number of concerns and fails to seriously consider other options. In part due its incorrect reading of the REA, the draft NPRM assumes insufficient funds for radio, and thus devises a rather drastic proposal for partial reimbursement. While the proposal may have some merit, it certainly is not the only approach. If truly concerned about having limited funds, the Commission should also consider as a model how it initially reimbursed TV broadcasters – allocating a significant percentage of funds up front and then truing-up payments once it is clear the fund will not be fully depleted.

With respect to the draft order on the Commission’s proposed incubator program, NAB emphasized the value of making the incubator program available as a path for entry into both the radio and television industries.<sup>8</sup> NAB believes there are qualified executives of diverse backgrounds who would like to own radio and television stations,<sup>9</sup> and several

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<sup>5</sup> Letter from Patrick McFadden to Marlene H. Dortch, MB Docket Nos. 18-214, 17-289; GN Docket No. 12-268 (July 25, 2018).

<sup>6</sup> Consolidated Appropriations Act, 2018, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)).

<sup>7</sup> Draft NPRM at ¶ 5.

<sup>8</sup> See NAB Comments in MB Docket Nos. 17-289 et al. (March 9, 2018) at 7, 8, 13, 14 (discussing application of the program to both radio and television); NAB Reply Comments in MB Docket Nos. 17-289 et al. (April 9, 2018) at 6-7 (discussing potential incentives for television broadcasters to participate); Letter to Marlene H. Dortch, FCC Secretary, from Rick Kaplan of NAB, MB Docket Nos. 17-289 et al. (April 25, 2018) at 4-5 (urging the FCC to find that an incubating station presumptively qualifies for a waiver of the TV rule’s top-four restriction because of the significant public interest benefits of incubating a new entrant).

<sup>9</sup> Letter to Marlene H. Dortch, FCC Secretary, from Erin L. Dozier of NAB regarding meeting of DuJuan McCoy of Bayou City Broadcasting, LLC, MB Docket Nos. 17-289 et al. (June 7, 2018) at 2-3.

commenters have endorsed inclusion of television stations in the program.<sup>10</sup> Should the Commission decline to include television stations in the incubator program at the time it adopts the draft order, we urge the Commission to concurrently adopt a further notice of proposed rulemaking that will examine whether to expand the program to promote new entry into television station ownership.

NAB also addressed with Mr. Berry the need for reform with respect to the national cap on broadcast TV ownership. As NAB and others have detailed in the record, broadcasters continue to provide local service in an era of fierce national competition. There is no evidence in the record to roll back the status quo. If the Commission eliminates the UHF discount, it should ensure that it does no harm to the current state of broadcast TV ownership. Eliminating the discount without raising the cap would be an unprecedented rollback and reregulation of the broadcast TV industry. Ultimately, such a rollback would only serve to harm local TV service, as increased pressure from much bigger entities – from Facebook and Google to AT&T/DirecTV/Time Warner – make it harder to compete and invest the necessary resources to serve local communities across the country.

Finally, NAB discussed with Ms. Carey the significant need for streamlining of the retrans election process. The current system is far too burdensome and unfair for TV broadcasters. Cable operators would have a far easier time identifying who they carry than broadcasters do attempting to uncover each cable system that could carry their signal. Rather than reinvent the wheel, the Commission should require any elections to be made in a standardized place in a broadcaster's public file. This would allow cable operators to easily identify stations' elections and for the Commission to easily monitor the process. Given the effort the Commission has expended to put broadcasters' public files on line, this would be yet another efficient use of the new system.

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<sup>10</sup> See, e.g., Comments of the Federal Communications Commission's Advisory Committee on Diversity and Digital Empowerment: A Proposal For An Incubator Program, MB Docket No. 17-289 (April 1, 2018) at 46; Letter to Marlene H. Dortch, Secretary, FCC from Mark Fratrik of BIA Capital Strategies, LLC and BIA Advisory Services, MB Docket No. 17-289 (June 11, 2018); Letter to Marlene H. Dortch, Secretary, FCC from Lyle Banks of WGCL-TV, MB Docket No. 17-289 (June 6, 2018); Letter to Marlene H. Dortch, Secretary, FCC from W. Lawrence Patrick, Managing Partner, Patrick Communications, MB Docket No. 17-289 (June 4, 2018); Letter to Marlene H. Dortch, Secretary, FCC from DuJuan McCoy, President and CEO, Bayou City Broadcasting, LLC (May 22, 2018); Letter from Diane Sutter, President/CEO, ShootingStar Broadcasting, MB Docket No. 17-289 (May 18, 2018); Reply Comments of Gray Television, Inc., MB Docket No. 17-289 (April 9, 2018); Reply Comments of Meredith Corporation, MB Docket No. 17-289 (April 9, 2018).

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'Rick Kaplan', with a long horizontal line extending to the right.

Rick Kaplan  
General Counsel and Executive Vice President,  
Legal and Regulatory Affairs  
National Association of Broadcasters

cc: Matthew Berry  
Michelle Carey